# EVIdENCE MERANdUM

# EXHIBIT

# "d"

# dis-QUAIIfICATOIN of WitNESS JOSE CASTRO

# Whether: INEffective Counsel on direct Appeal

Whether: Jose Castro declarative Mental health testimoney should of caused a forfeit of disquilfication as a witness and too saluted Petitioner's trial rights. Castro the allege victim testifies where about's. In his Living situation see in R.T. Pg. 27;21,22 Vol.* 2)
When the vacuum cleaner was returned see in EXHIBIT'S
Disoriented testimoney about cell Phon(see in R.T. Pg. 30;4,28 Vol 2)
Castro testified Petitioner busted in the door (see in R.T. Pg. 30;28.., Vol. 2)

Whether: Petitioner should of had a gun Line up. Petitioner Feels a gun Line up should of been presented to Castro & Kinoso. Since Castro was supposely attack with a gun once again ineffective counsel. State Supreme Court: Petitioner should of raised that issue in trial court or direct appeal. furthere more that Neglect interfered with Petitioner due process an ability to form a case in actual innocence.

Whether: By Prosecution holding up the gun showing witnesses and the Jury Made it odvious for witness & Jury to what kind of gun was supposently use. It would'nt of been a problem there were to other gun's that had Nothin to do with the trial that could of been use. So there purpose was to misLead the Jury. Officer Chase call the gun a savage shot gun. Which isn't the proper Name for the Official use shot gun which it's Manufactured Name is - ( Peterson - 820-B" whether: In testimoney other witness testified, Petitioner kept it at his side: quote, they throught it was a baseball bat. One would recognize the gun he was supposently busted the door with (see in R.T. Pg. 32; 1,12 Vol. #2) Petitioner feels there is no logic a person would struggle with a shot gun to his neck with a finger on the trigger like witnesses testified too (see in R.T. Pg. 31; 24,28... Vol. #2) (R.T. Pg. 32; 1-28) (R.T. Pg. 33; 1-28 Vol. #2)

whether: Once again nonrespondsive testimoney of the where about of the Knox's starting with Christopher Knox. Petitioner feel Counsel stood side line while this excesive reckless nonresponsive testimoney proceeded in false statments.

whether: The conduct of Jose Castro the proclaim victim night of the incident could testify responsibly an not run interference with Petitioners Trial-rights and due process among Petitioner's Sixth & fourteenth amendment. Counsels failure to investigate Jose Castro's mental-health issues.

Moreover Petitioner would like the courts to deem the Petitioner's due Process since counsel lack in perseverance.

On the night of the incident it was dark an loud so why wouldn't Counsel have night pictures instead of letting Prosecution, have day time pictures that would contradict witnesses.

It's still suspect to what Castro & R. Knox testified too what they actually heard and they're ability to see from a distance

of about 30 Ft an recgonize how Petitioner operated.
If Counsel would of investigated the atmosphere that Night where Petitioner was Park. Their findings would of been a dark parking Lot with dim-Yellow Light's, with bad Night Vision refer to the 911 call: Evidence. The traffic stays Loud between the hour 12:00 AM to 12:PM around the clock it's a Main street.
Petitioner Knows this investigation was available an could of been arrange an for this to be a over cite is ineffective assistance of trial Counsel to form a proper defense at trial...
SEE IN EXhibit a, b, c, d

Whether: Counsel failure to investigate Jose Castro's Mental PhYsidogical activites. Moreover the Night Vision it took to impeach Castro & Knox testimoneY once aagin. Night of the incident Castro's Probability he struggels to precieve and recollect from where Petitioner was outside of the apartment too where Petitioner was in the Parking Lot: do he wear glassess or contacts? Witness also proclaim a brusie on his neck that was never Photo our recorded bY officer chase that was on that scene.

Whether: while testimoneY is acceeding in trial Cousel had ample time to respond too Castro Mental health while he tend to super indulge with infancY for his own gratification. Castro indulged himself with idol delusions.

whether: Castro's diminish Mental state due to Medication prodian intoxication should of been disputed by Counsel for truthfulness and credibility of the witness through the proper channels (see in R.T. Pg. 31; 1,28...) Vol. *2 )

whether: should Counsel took the time to go too the apartment complex an investigate, Counsel would of fount dem lights moreover Loud traffic go'on. Castro he went to his back room. He couldn't of possibly heard anyone from an angle. And that's Castro's testimoney (see in R.T. Pg. 32; 1,28... Vol *2 R.T. Pg 33, 35; 1,28... Vol *2 )

whether: Castro has to establish where Chris Knox, where C. Knox and his wife. with all this Yelling an sceaming going on we are at Lease a minute or two into this supposed rage. We need C. Knox testimoney at this to close some of the viod. But niether Prosecution or defence Counsel subpena him for testimoney
After all it was his home, he did threaten Petitioner with a dangerous weapon a (base ball bat) failure to investigate his role and performance enable Petitioner to form a self defence cause. (see in R.T. Pg. 33; 1,28... Vol *2) Therefore Castro's testimoney is suspect once again create with huge infancies throught testimoney (see in R.T. Pg. 35; 1,28,) R.T. 36; 1,16..., Vol *2 )
Petitioner needs to be place in the parking lot threatening the Knoxes. Petitioner feels his guarantee of a full proper

Valid trial was deprive from him. Reason being witness was homeless Castro testified he was sleeping in back of the apartment complex. After the Knox's had move Sept. 12, 2004. The incident was far from Castro mind to support that statement. Petitioner heard through side bar the Judge tell my counsel not to refer to Jose Castro as being homeless (see in R.T. Dept #12 & Vol. #2 ) For the sake of testimoney that's where Petitioner notice "this (Miscarraige) of Justic. It's not clear up into today that a indengent homeless person cannot be said... he or her is homeless. Why? But lets say however counsel did get the chance to touch some base's about this issue. Castro testifys that was an had been put up into a Hotel before an during this trial. Petitioner would like to expose prosecution for laying a trap to Castro. How! Well is investigator's interview the apartment complex manager also witness for Prosecution. Well they left they're calling card with her, she let the investigator's know he still hangs around the complex. Petitioner and the Knox's where evicted from these apartments further more The Manager lead Castro to think he qualified for a apartment, all the while she call the D.A. investigator's to the interview an he was subpena for court. That's why his testimoney is standing suspect. Prosecution capitalized on his living situation and he desided to testify in exchange for comfort. Months had lasp Castro had no intensions of doing any testifing or he would of stay in touch with Dan as he refer's to him as.

whether: The investagation on Rebbeca Know was drop for her suspect testimony. the investigation would of show her defrauting of checks even the one she defrauted of Petitioners. Do to limited cross-examinating it was difficult to expos Ms. Knox. Moreover since Petitioner didnt have access to these documents. I would have to rely on sworn testimoney by my counsel Mr. Stacey Gulley Deputy Defence Attorney and District Attorney Dan Link.

As Castro Preludes in tesitmoney Castro remains nonresponsive (see in R.T. Vol #2 ). Let's touch bases on the so call bruises on his neck did it obiterate it's own presentes. Petitioner would like to point out opportunism is large in this trial by Prosecution and Judge with and allowing delusional testimoney.

Castro admits he was under Prescitption Medication (see in R.T. Pg. 41; 24, 28...) (Pg; 42; 1, 28) The where about of Petitioner when pertaining to vacuum cleaner. (see in R.T. Pg. 44; 25, 28...,) See in Page 45 witness confess to not knowing the true time of contact: Precieve & recollect see in R.T. Pg 45; 3

whether: Castro's confusion continues about the first contact with Petitioner see in R.T. pg. 45; 1, 19...). The Knox's didnt have a Patio refer to Prosecutions EXHIBITS B" Just Stairs Castro fells to know the occurents (see in R.T. Pg. 45; 23, ) Petitioner would like to point out Castro's answers at trial mostly ended in, I don't know our speculation (see in R.T. Pg. 45; 21, 28 Vol 2 )

Petitioner: Was not at home 9-12-04 between 4:00 & 5:00 Castro unsure again about. at point as we proceeded in trial Castro testimoney is still shakey he says at one time he's waiting for Rebbeca Knox to come back to give the vacuum back then he turns around an says he did it for chris a lot of time is lasping (SEE in R.T. Pg. 47; 1,5) Castro starts to be none-responsive once again its a ongoing problem (SEE IN R.T. 47 Vol.)

Petitioner is greatly concern with this Miscarriage of Judge Mc Grath or Counsel Motioning for a Psychologist referral to if this Man stable to testify in a criminal trial.

for: ONE Castro admits he was under Pain Medication (SEE in R.T. Pg. 41: 24, 28..., Pg. 42: 1,28..

Moreover The where abouts of Petitioner when pertaining to Vacuum cleaner (SEE in R.T. Pg. 44: 25,28...Vol ).

On Page *45 witness confess to not knowing the true time of contact Precieve & recollect (R.T. Pg. 45; 1..., Vol )

Costro's confusion continues about the first contact with Petitioner (SEE in Pa. 43: 1,14....19 Vol )

Petitioner was out on a job 10:00 to 8:30 Petitioner Mention this to Counsel it should of been investigated.

Castro: Testimoney to when he seen Petitioner with shot Gun (SEE in R.T. Pg 47: 17, 28).

Through cross-examination Castro finally at end omitted things was not clear an the infancies of his testimoney is driven by drugs and Mental health issues see in (R.T. Pg. 48; 9,22...) Nonresponsive (see in R.T. Pg 48:23...) Castro made it clear to counsel not to be mistaken (see in R.T. Pg. 48; 27,28... Pg. 49:1) He told when it happen where it happen too his knowlege what's it's call. When ask, he says 5150 they said, 5150 that is his replie (see in R.T. Pg. 49:16,28..., R.T. Pg. 50:1,) Must see: Castro tells how the medication he takes, reactions are see in R.T. Pg 50; 4, )

When ask about his Mental disorder an what it does, his replie (see in R.T. Pg. 50; 4.14...,).

Whether: Petitioner finds it hard for anyone not to hear someone busting through the front door not heard by a occupant 10 Ft. away with the door open or close.

Castro: Testifies the time when Petitioner comes back and finally where Rebbeca is (see in R.T. Pg. 51; 8,10...) Castro testimoney has gotten insane if Its fair to say. Castro testified Petitioner grad the phone from him and threw it at him with R. Knox standing next to him where is Chris Knox? (see in R.T. Pg. 51; 16,28...) Castro claims I, hurt his back no bruise to show see in R.T. Pg. 52: 6,28...) Petitioner knows an feel if a victim is scared or bruies any type of way (see in R.T. Pg. 53) infliction is done it should be recorded by the responding officer-s that is one of the biggest real proof Law has to offer as evidence.

vol. 1

EVIdENCE MEMORANdUM

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REPORTER'S TRANSCRIPT
ON
APPEAL VOl. #1

COURT OF APPEAL -- STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

| | |
|---|---|
| PEOPLE OF THE STATE OF CALIFORNIA | FROM SAN DIEGO COUNTY |
| PLAINTIFF AND RESPONDENT, | HON. WILLIAM J. MCGRATH, JUDGE |
| VS. | |
| | APPEAL NO. DO46320 |
| JAMES CUNNINGHAM, | NO. SCE243538 |
| DEFENDANT AND APPELLANT. | |

**REPORTER'S TRANSCRIPT ON APPEAL**

JANUARY 4, 2005

SAN DIEGO, CALIFORNIA

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APPEARANCES:

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IN PRO PER

REPORTED BY: IRENE PERKINS, CSR 12727

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO, EAST COUNTY DIVISION

DEPARTMENT 9 BEFORE HON. WILLIAM J. MCGRATH, JUDGE

| | |
|---|---|
| PEOPLE OF THE STATE OF CALIFORNIA,<br>PLAINTIFF,<br>VS.<br>JAMES CUNNINGHAM,<br>DEFENDANT. | CASE NO. SCE243538 |

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

JANUARY 4, 2005

**APPEARANCES:**

**FOR THE PLAINTIFF:** DAN LINK
DEPUTY DISTRICT ATTORNEY

**FOR THE DEFENDANT:** STACY GULLEY
DEPUTY PUBLIC DEFENDER

REPORTED BY: IRENE PERKINS, CSR NO. 12727
SAN DIEGO SUPERIOR COURT

**EL CAJON, CALIFORNIA; TUESDAY, JANUARY 4, 2005; 10:58 A.M.**

THE COURT: WE'RE ON THE RECORD IN THE MATTER OF THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS CUNNINGHAM. THIS IS CASE NUMBER SCE243548.

APPEARANCES, PLEASE.

MR. LINK: DAN LINK, DEPUTY DISTRICT ATTORNEY FOR THE PEOPLE.

MR. GULLEY: STACY GULLEY, OFFICE OF THE PUBLIC DEFENDER ON BEHALF OF MR. CUNNINGHAM WHO IS PRESENT BEFORE THE COURT.

THE COURT: MR. CUNNINGHAM IS PRESENT. HE'S BEEN DRESSED OUT IN CIVILIAN ATTIRE. THE COURT WILL DO IT'S VERY BEST TO KEEP HIS CUSTODY STATUS FROM THE JURY. HE WILL NOT BE HANDCUFFED WHILE HE'S IN THE COURTROOM.

DEPUTY WAITE, THE DEFENDANT'S FOOT WILL BE CUFFED TO THE FLOOR; IS THAT CORRECT?

THE BAILIFF: YES, YOUR HONOR.

THE COURT: ALL RIGHT. MR. CUNNINGHAM, IF YOU SHOULD FIND IT NECESSARY TO STAND AT ANY POINT WHILE THE JURORS ARE IN THE COURTROOM, TRY TO KEEP THAT FOOT THAT'S CUFFED, KEEP THE CHAINS AND EVERYTHING UNDER THE TABLE SO THAT THEY CAN'T SEE IT. THAT'S IN YOUR BEST INTEREST.

THE DEFENDANT: ALL RIGHT.

THE COURT: NOW, THIS MATTER HAS BEEN SENT HERE FOR JURY TRIAL. NO JURORS ARE PRESENT YET. AND I'VE HAD JUST A VERY BRIEF CONFERENCE WITH THE ATTORNEYS IN CHAMBERS JUST TO SEE WHAT THE IN LIMINE ISSUES ARE. THERE IS A PEOPLE'S TRIAL BRIEF, WHICH I HAVE READ, AND I'LL TURN FIRST TO THE PEOPLE

FOR IN LIMINE MOTIONS.

MR. LINK?

MR. LINK: YES, YOUR HONOR. THERE'S THE POSSIBILITY THAT WE WILL BE PLAYING A 911 TAPE, AND WE'D ASK THAT THAT BE ALLOWED TO BE PLAYED AT TRIAL.

THE COURT: ALL RIGHT. MR. GULLEY, DO YOU HAVE ANY OBJECTION TO THAT?

MR. GULLEY: YOUR HONOR, MY OBJECTION'S ONLY TO ONE PORTION OF THE TAPE WHERE BOTH CHRISTOPHER AND REBECCA KNOX BOTH SAY TO THE POLICE WHEN THEY WERE ASKED FOR A DESCRIPTION, THEY BOTH SAID, "YOU KNOW HIM ALREADY. YOU KNOW HIM." THAT'S MY PROBLEM.

THE COURT: OKAY. LET'S DO THIS. DO YOU HAVE THE TAPE HERE?

MR. LINK: I DO HAVE A TAPE. I HOPE IT'S THE RIGHT ONE. DO YOU HAVE A PLAYER?

THE COURT: WE DON'T HAVE A PLAYER HERE. I'LL TELL YOU WHAT. DO YOU BOTH AGREE THAT THE TRANSCRIPT IS ACCURATE?

MR. GULLEY: YES.

MR. LINK: YES.

THE COURT: OKAY. WE'LL GO OFF THE RECORD FOR TWO MINUTES. I'LL READ THE TRANSCRIPT AND SEE WHAT IT SAYS.

(BRIEF DISCUSSION OFF THE RECORD.)

THE COURT: ALL RIGHT. THE COURT HAS READ THE 8 PAGE TRANSCRIPT WHICH I WILL, BY THE WAY, AT THIS TIME MARK COURT'S EXHIBIT NUMBER 1 TO PRESERVE IT WITH THE FILE. THERE ARE TWO PLACES ON THE TRANSCRIPT THAT I BELIEVE REFERENCE THE POLICE ALLEGEDLY KNOWING MR. CUNNINGHAM, PAGE 2, LINE 27, WHERE IT SAYS, QUOTE, "HE BLACK. YOU ALL KNOW HIM," CLOSE QUOTE.

AND THEN THERE'S PAGE 4, LINE 7, "YOUR OFFICERS" -- QUOTE, "YOUR OFFICERS WILL KNOW. THEY KNOW HIM," CLOSE QUOTE. ANYTHING -- ARE THOSE THE TWO PLACES, MR. GULLEY, AND ARE THERE ANY OTHERS?

MR. GULLEY: NO, YOUR HONOR. THOSE ARE THE TWO.

THE COURT: OKAY. AND YOUR POSITION -- I'M SORRY -- YOUR POSITION IS THAT IT'S PREJUDICIAL TO LET THE JURY HEAR THAT INDICATING SOME PRIOR LAW ENFORCEMENT CONTACTS WITH YOUR CLIENT?

MR. GULLEY: YES, YOUR HONOR. NEGATIVE CONTACTS, YES.

THE COURT: OKAY. AND, MR. LINK, THE PEOPLE'S POSITION?

MR. LINK: YES, YOUR HONOR. IN LINE 2, IT SAYS, "HE BLACK. YOU ALL KNOW HIM." IT DOESN'T SAY -- OBVIOUSLY, HE'S TALKING TO A DISPATCHER, AND THE LOGICAL THING WOULD BE TO INFER THAT HE'S REFERRING TO THE POLICE. BUT IT DOESN'T SPECIFICALLY SAY, "OH, YOU ALL KNOW HIM. YOU'VE ARRESTED HIM BEFORE." IT DOESN'T MENTION ANY, SPECIFICALLY, ANY PREVIOUS CONTACTS, NOR DOES PAGE 4. I DON'T THINK IT'S OVERLY PREJUDICIAL, AND WE ASK THAT IT STAY IN.

THE COURT: AS TO THE 911 TAPE ITSELF, THE PEOPLE ARE MOVING THAT IT BE PLAYED TO THE JURY AS A SPONTANEOUS DECLARATION OR ALTERNATIVE IS A PUBLIC RECORD.

MR. GULLEY, DO YOU HAVE ANY OBJECTION TO THAT?

MR. GULLEY: NO, YOUR HONOR.

THE COURT: THE 911 TAPE WILL BE PLAYED.

IN WEIGHING WHETHER OR NOT A PORTION OF IT SHOULD BE REMOVED AND/OR REDACTED, THE COURT HAS TO CONSIDER THE PREJUDICE THAT THE PROPOSED REDACTED PORTION MIGHT HAVE TO JURORS. I ALSO TEND TO CONSIDER, BECAUSE I'VE EXPERIENCED A LOT OF JURIES OVER THE YEARS, THAT THE JURORS -- I HAVE TO CONSIDER WHETHER OR NOT THE JURORS WILL SPECULATE AS TO WHAT A REDACTED PORTION MIGHT BE, OR AS TO WHY IT'S BEING REDACTED. I SUPPOSE IT MIGHT BE POSSIBLE TO REDACT IT WITHOUT IT BEING APPARENT THAT SOMETHING IS MISSING, BUT USUALLY NOT. AND USUALLY THE FLOW OF THE CONVERSATION ON THE TAPE MAKES IT CLEAR TO A JUROR THAT SOMETHING HAS BEEN REMOVED.

JURORS LOVE TO SPECULATE ABOUT THINGS. EVERY JUROR IN DELIBERATIONS, IT SEEMS, WANTS THE NEXT JUROR TO THINK THAT HE OR SHE IS CLEVER ENOUGH TO FIGURE OUT SOMETHING THAT HASN'T BEEN GIVEN TO THEM DESPITE INSTRUCTIONS TO THE CONTRARY. SO WITH ALL OF THAT BACKGROUND, I DON'T PERCEIVE THAT THE COMPLAINED OF PORTIONS ARE PREJUDICIAL ENOUGH TO BE REMOVED.

AND, MR. GULLEY, YOU WILL BE FREE ON CROSS-EXAMINATION OF ANY OF THE POLICE OFFICERS TO ASK THEM WHETHER OR NOT THEY'VE HAD PREVIOUS CONTACTS WITH YOUR CLIENT. I KNOW AT LEAST ONE IN THE PRELIM TRANSCRIPT SAID NO, AND IF YOU WISH TO ASK THAT QUESTION OF THEM, YOU MAY. AND YOU MAY, IF THE ANSWERS ARE ALL THERE, YOU CAN ARGUE THERE WERE NO PREVIOUS CONTACTS. BUT I DON'T THINK IT'S ENOUGH TO REMOVE IT FROM THE TRANSCRIPT, AND THE MOTION TO DO SO WILL BE DENIED, AND

THE 911 TAPE WILL BE PLAYED.

THE WAY I DO THESE IS TO INSTRUCT THE JURY THAT THE TRANSCRIPT ITSELF IS NOT EVIDENCE AND IS ONLY A GUIDE TO THEM. THE TRANSCRIPT WOULD BE DISTRIBUTED TO THE JURORS FOR THEM TO FOLLOW ALONG ONCE THE TAPE IS STARTED. BUT THE -- AND THE TRANSCRIPT WOULD BE PROVIDED TO THEM IN THE JURY ROOM IF AND WHEN THEY ASK TO HEAR THE TAPE AGAIN. BUT IT WOULD NOT BE MARKED AS EVIDENCE. THE EVIDENCE WOULD BE THE SOUNDS THAT ARE ON THE TAPE NOT THE WORDS THAT ARE ON THE TRANSCRIPT, ALTHOUGH WE WILL PRESERVE THE TRANSCRIPT IN THE COURT FILE.

AND I ASSUME YOU HAVE A TAPE PLAYER UPSTAIRS, MR. LINK, THAT YOU'LL BE BRINGING DOWN?

MR. LINK: YES, YOUR HONOR.

THE COURT: OKAY. WHAT'S NEXT?

MR. LINK: MOTION IN LIMINE WOULD BE IF THE DEFENDANT DOES TAKE THE STAND, IT WOULD BE TO BE ABLE TO IMPEACH HIM ON HIS '83 ROBBERY STRIKE, AND HIS 1994 12021(A), FELONY POSSESSION OF A FIREARM. HE ALSO HAS A 1994 MISDEMEANOR HIT AND RUN. I'M NOT -- TO BE HONEST WITH YOU, I'M NOT SURE IF THAT IS A PRIORABLE OFFENSE THAT I'M ALLOWED TO IMPEACH HIM ON.

THE COURT: OKAY. LET'S ASSUME FOR THE MOMENT THAT IT'S NOT, BECAUSE EVEN IF IT TECHNICALLY WAS, IT'S AGED AS WELL AS THE DEGREE OF IMPEACHIBILITY THAT SUCH AN OFFENSE MIGHT HAVE ARE BOTH ENOUGH TO KEEP IT OUT. SO I THINK REALLY WHAT WE'RE TALKING ABOUT WOULD BE THE '83 FELONY ROBBERY AND THE '94 FELONY POSSESSION.

YOUR RESPONSE, MR. GULLEY?

MR. GULLEY: YOUR HONOR, FIRST OF ALL, I WOULD ARGUE BOTH IN TERMS OF AGE IS REALLY TOO OLD IN TIME. IT WOULD BE HIGHLY PREJUDICIAL. HOWEVER, THE ONE FROM '94, BEING THAT HE'S BEING CHARGED WITH THE SAME OFFENSE, I THINK, IS EVEN MORE PREJUDICIAL BECAUSE THE JURY IS GOING TO HEAR THAT AND THINK, "OKAY, HERE'S A GUY THAT KEEPS RUNNING AROUND WITH GUNS IN HIS HAND AND IN HIS POSSESSION." SO I WILL STRONGLY ARGUE THAT THAT SHOULD NOT COME IN.

AS TO THE '83, IF THAT WAS LIMITED TO AN '83 PRIOR FELONY CONVICTION, THEN I HAVE NO PROBLEMS WITH IT. HOWEVER, IF YOU START SAYING THE 1983 ROBBERY CONVICTION, THEN I THINK, AGAIN, NOT ONLY DO YOU HAVE A TIME, BUT YOU HAVE AN INHERENT PREJUDICE TO COMMENT ON THE ROBBERY. SO I WOULD ARGUE THAT NONE OF THOSE THINGS SHOULD ACTUALLY COME IN.

THE COURT: OKAY. YOUR RESPONSE, MR. LINK?

MR. LINK: JUST BRIEFLY, YOUR HONOR. IF THE '83 STRIKE WAS TO COME IN, I WOULD EXPECT TO REFERENCE IT AS 1983, THE YEAR, THE FACT THAT IT IS A ROBBERY, AND THE FACT THAT IT IS A FELONY, AND THAT'S IT. I DON'T -- I WOULDN'T NECESSARILY --

THE COURT: WHAT'S YOUR THOUGHT ON THE AGE OF THE '83 PRIOR? IT'S 21 YEARS OLD. I'VE BEEN TOLD THAT THE DEFENDANT DID NOT GO TO PRISON ON IT. SO ANY CUSTODY HE SERVED WOULD HAVE BEEN MINIMAL, MEANING THAT HE, SUPPOSEDLY, ONE WOULD ASSUME, HE WOULD REMAIN LAW-ABIDING BETWEEN '83 AND '94 AND FROM '94 TO PRESENT. I DO HAVE SOME CONCERN ABOUT THE AGE OF THESE PRIORS, AND ALSO CONCERNS ABOUT THE

SIMILARITY OF THE 12021(A) FROM '94 TO THE PRESENT TIME CHARGE. WOULD YOU RESPOND TO THAT, PLEASE.

MR. LINK: YES, YOUR HONOR. I UNDERSTAND THAT THE LENGTH IS A BIT OF AN ISSUE. BUT 1994 IS ONLY 11 YEARS OLD. IT IS EXTREMELY RELEVANT. IT DOES GO DIRECTLY TO HIS CREDIBILITY, IF HE CHOOSES TO TAKE THE STAND. AND AS FAR AS NOT GOING TO PRISON ON A ROBBERY STRIKE, I DON'T THINK THAT SHOULD BE TAKEN INTO ACCOUNT, THE ACTUAL LENGTH OF TIME THAT HE SPENT.

THE COURT: AND I'M SORRY, THE REASON I BROUGHT THAT UP IS BECAUSE WHAT IS IMPORTANT IS WHETHER THE PERSON -- AND NOT WHETHER THEY -- HOW MUCH TIME THEY SPENT, BUT WHETHER OR NOT THEY WERE ON THE STREETS AND REMAINED LAW-ABIDING WHILE ON THE STREETS AS OPPOSED TO BEING LOCKED UP SOMEWHERE FOR, YOU KNOW, 8 YEARS AND WERE ONLY ON THE STREETS FOR 2 YEARS. THAT'S THE ONLY REASON I THOUGHT IT HAD SOME RELEVANCE.

MR. LINK: I UNDERSTAND, YOUR HONOR.

THE COURT: OKAY.

MR. LINK: YOUR HONOR, BECAUSE OF THE SEVERITY OF THE CHARGE, THE PEOPLE WOULD ARGUE THAT IT COMES IN.

THE COURT: ALL RIGHT. NOW, BEFORE I RULE ON THAT, IT'S MY UNDERSTANDING THAT MR. GULLEY WILL BE STIPULATING THE FELONY STATUS OF HIS CLIENT FOR PURPOSES OF THE ELEMENT IN COUNT 3, I BELIEVE IT IS.

MR. GULLEY: THAT'S CORRECT, YOUR HONOR.

THE COURT: FELONY POSSESSION. AND I THINK ALL THAT NEEDS TO BE PROVEN ON THAT IS THAT THE DEFENDANT WAS --

IS A CONVICTED FELON AS OF THE DATE OF THESE OFFENSES, AND THAT NEITHER THE TIME OR THE NATURE OF THE FELONY IS RELEVANT. WOULD YOU AGREE, MR. LINK?

MR. LINK: AGREED.

THE COURT: OKAY.

MR. LINK: IF STIPULATED TO, AGREED.

THE COURT: AND IT WILL HAVE TO BE A WRITTEN STIPULATION. IT SHOULD BE YOU -- IT WOULD BE YOUR JOB TO DRAFT IT, MR. GULLEY, AND GET BOTH ATTORNEYS, AS WELL AS YOUR CLIENT, TO SIGN IT.

WELL, I HAVE A PROBLEM WITH THE IMPEACHIBILITY OF BOTH OF THESE CASES. IN WEIGHING AND TRYING TO RESOLVE THAT PROBLEM, I FEEL THAT THE 21-YEAR-OLD PC2311, ROBBERY CONVICTION, IS TOO OLD TO USE, ESPECIALLY SINCE THE DEFENDANT'S CRIMINAL HISTORY HAS BEEN ONLY ONE, MAYBE TWO THINGS SINCE THEN. THAT'S THE MOST COMPELLING IMPEACHABLE OFFENSE, BUT IT'S ALSO, BY FAR, THE OLDEST, AND I WON'T ALLOW THE '83 ROBBERY TO COME IN.

THE 1994 PC12021(A) IS 10 YEARS NEWER. IT'S ALSO 10 YEARS OLD. BUT 10 YEARS IS NOT AS OLD AS 21 YEARS. I WILL ALLOW THE PEOPLE TO IMPEACH WITH THAT FELONY, BUT IT WILL HAVE TO BE CLEANED UP AND MAYBE REFERRED TO ONLY AS A FELONY CONVICTION FROM 1994. I CAN'T ALLOW IT TO BE STATED AS A 12021(A). THAT WOULD BE TOO PREJUDICIAL SINCE IT'S THE SAME CRIME CHARGED TODAY.

MR. LINK: UNDERSTOOD, YOUR HONOR.

THE COURT: OKAY.

MR. LINK: SO IF THE DEFENDANT WERE TO TAKE THE

STAND, THE ONLY CONVICTION I WOULD BE ABLE TO IMPEACH HIM WITH WOULD BE THE 1994 FELONY CONVICTION?

THE COURT: IN A SANITIZED VERSION OF IT.

MR. LINK: JUST LIKE THAT, A FELONY CONVICTION?

THE COURT: RIGHT.

NOW, IF HE DENIES IT, OR IF HE WOULD BE -- CHRISTMAS COMES EARLY FOR THE D.A., THEN, OF COURSE, IF HE DENIES IT, THEN YOU CAN GO INTO DETAILS AND REFRESH HIS RECOLLECTION WITH THOSE DETAILS. BUT IF HE DOESN'T DENY IT, THAT'S AS FAR AS YOU CAN GO.

OKAY. ANYTHING ELSE, MR. LINK?

MR. LINK: THERE IS A POLICE VIDEOTAPE OF THE DEFENDANT THROWING A SHOTGUN OUT A WINDOW, OR THROWING AN ITEM OUT HIS WINDOW. I'M NOT SURE DEFENSE IS GOING TO OBJECT TO THAT COMING IN. I CAN PROPERLY AUTHENTICATE IT.

THE COURT: HAVE YOU SEEN IT, MR. GULLEY?

MR. GULLEY: I HAVE, YOUR HONOR.

THE COURT: OKAY. THERE'S NO DISCOVERY ISSUE WITH IT?

MR. GULLEY: NO.

THE COURT: AND YOU'VE SEEN THE VIDEOTAPE, AND IT CERTAINLY SOUNDS LIKE SOMETHING, ASSUMING FOUNDATION CAN BE LAID FOR IT, IS CERTAINLY RELEVANT AND WOULD BE ALLOWED IN.

MR. LINK: AND THAT IS IT, YOUR HONOR.

THE COURT: JOINT MOTION TO EXCLUDE WITNESSES, MAY I ASSUME THAT, MR. LINK?

MR. LINK: YES.

THE COURT: MR. GULLEY?

MR. GULLEY: YES.

THE COURT: IT WILL BE SO ORDERED.

ANY IN LIMINES FROM THE DEFENSE, MR. GULLEY?

MR. GULLEY: YOUR HONOR, I DO HAVE A QUESTION ABOUT THE LIVING ARRANGEMENTS OF MR. CASTRO AT THIS TIME. I'M LED TO BELIEVE THAT THE DISTRICT ATTORNEY'S OFFICE IS PUTTING HIM UP AT THIS TIME. IF THAT'S THE CASE, I WOULD LIKE TO GO INTO THAT AREA WITH HIM.

THE COURT: WHAT'S THE ISSUE THERE, MR. LINK?

MR. LINK: YOUR HONOR, MR. CASTRO IS HOMELESS, AND WE HAVE BEEN PUTTING HIM IN A HOTEL FOR THE LAST 5 NIGHTS, I BELIEVE. AND DID I TELL YOU THAT, MR. GULLEY?

MR. GULLEY: YES.

MR. LINK: OKAY.

THE COURT: ALL RIGHT. AND YOU WANT TO BRING THE FACT OUT THAT THE PEOPLE ARE PAYING FOR HIS HOTEL ROOM DURING THE TERM OF THE TRIAL?

MR. GULLEY: RIGHT.

THE COURT: ANY OBJECTION, MR. LINK?

MR. LINK: NO. I DON'T PARTICULARLY THINK IT'S RELEVANT, BUT --

THE COURT: WELL, IT HAS RELEVANCE. I MEAN, I'M NOT SURE IT HAS A LOT OF RELEVANCE. BUT I THINK THE DEFENDANT IS ENTITLED TO -- I MEAN, IF THE MAN IS HOMELESS AND THE PEOPLE, THE PROSECUTION, WERE PAYING FOR HIS HOTEL BILL WHILE HE TESTIFIES, IT'S AKIN AS TO HOW MUCH IS THE EXPERT BEING PAID, SOMETHING LIKE THAT.

MR. LINK: SOMEWHAT, YOUR HONOR, I WOULD HATE FOR

THIS PARTICULAR VICTIM TO BE PREJUDICED BECAUSE HE'S HOMELESS. AND I THINK THERE'S AN ARGUMENT TO BE MADE THAT THE FACT THAT HE'S HOMELESS MAY BE PREJUDICIAL TO A JURY.

THE COURT: WELL, THE FACT THAT HE'S HOMELESS DOESN'T NECESSARILY HAVE TO COME IN. NOW, I SUPPOSE ONE COULD SPECULATE THAT HE'S MOVED OUT OF TOWN -- THAT'S ACTUALLY WHAT I THOUGHT IT WAS WHEN I FIRST HEARD IT -- OR THAT HE'S HOMELESS. SO THE DEFENSE WILL BE ALLOWED TO BRING IN EVIDENCE THAT CASTRO IS BEING PUT UP IN A MOTEL BY THE PEOPLE FOR THE ONE WEEK OR SO IT WILL TAKE HIM TO BE HERE AND TESTIFY. BUT THEY WILL NOT BE ALLOWED TO GO INTO WHY HE NEEDS A MOTEL. THAT PART IS NOT RELEVANT. AND THE FACT THAT HE MAY BE HOMELESS CANNOT COME OUT BY EITHER SIDE. AND I THINK IT'S AS LIKELY TO EXPECT THAT HE'S AN OUT-OF-TOWNER AS IT IS THAT HE'S A HOMELESS PERSON.

MR. LINK: I THINK BY HIS APPEARANCE I DISAGREE WITH THAT.

THE COURT: WELL, I HAVEN'T SEEN HIS APPEARANCE.

MR. LINK: NO, YOUR HONOR, AND I APOLOGIZE FOR THAT. BUT I BELIEVE THAT A JURY WILL CLEARLY BE ABLE TO DISTINGUISH A POTENTIAL OUT-OF-TOWNER TO A HOMELESS PERSON.

THE COURT: WELL, IF HE LOOKS HOMELESS, THEN THE CAT IS OUT OF THE BAG WHETHER OR NOT YOU PUT HIM UP.

MR. LINK: TRUE.

THE COURT: SO I DON'T SEE THAT THAT'S A BIG ISSUE. BUT MY RULING WILL STAND.

LET ME GET A WORD IN EDGEWISE HERE, IF I MAY, MR. CUNNINGHAM. MR. GULLEY, YOU CAN ASK IF HE'S BEING PUT

UP, BUT YOU CAN'T ASK WHETHER OR NOT HE'S HOMELESS.

MR. GULLEY: RIGHT. I UNDERSTAND THAT.

THE COURT: OKAY. MR. GULLEY, ANYTHING ELSE?

MR. GULLEY: YES, YOUR HONOR. REBECCA KNOX WILL BE TESTIFYING. MS. KNOX PREVIOUSLY FILED A REPORT ACCUSING HER HUSBAND OF A DOMESTIC VIOLENCE SITUATION. SHE THEN RECANTED THE STATEMENTS AFTER HER HUSBAND WAS ARRESTED. CHARGES WERE DROPPED AGAINST HIM. I THINK THIS GOES TOWARD HER CREDIBILITY. UNFORTUNATELY, I LEFT THE FILE IN MY OFFICE, BUT I THINK IT WAS FROM 2001. OF COURSE, I WOULD LIKE TO USE THAT TO IMPEACH HER IN TERMS OF HER CREDIBILITY TODAY AND WHAT SHE SAID TO THE POLICE AT THE TIME.

THE COURT: MR. LINK?

MR. LINK: THIS IS ON A CASE THAT WAS NEVER FILED. I DON'T THINK IT'S RELEVANT. IT'S BACK IN 2001. MS. KNOX ISN'T EVEN PARTICULARLY THE VICTIM IN THIS CASE. I DON'T KNOW THAT THAT HAS ANY WEIGHT AS FAR AS WITNESS CREDIBILITY, BUT I DON'T KNOW IF MR. GULLEY HAS THE POLICE REPORTS. EVEN IF HE DID, THE CHARGES WERE DROPPED. I DON'T THINK IT'S ALLOWED.

THE COURT: WERE THEY DROPPED OR WERE THEY NEVER FILED?

MR. GULLEY: THEY WERE DROPPED. HE WAS ARRESTED, AND WE WERE ASSIGNED TO REPRESENT HIM. THE CHARGES WERE DROPPED, I BELIEVE, AFTER PRELIM DURING A READINESS CONFERENCE. I HAD THAT FILE PULLED.

MR. LINK: EVEN WITH THAT FACT OF RECANTING ON A DOMESTIC SITUATION, I DON'T THINK -- AND THERE COULD BE OTHER

REASONS WHY THE CASE WAS DROPPED THAT I MAY OR MAY NOT KNOW ABOUT. I DON'T THINK IT COMES IN.

THE COURT: ALL RIGHT. ANYTHING FURTHER ON THAT ISSUE?

MR. GULLEY: NO, YOUR HONOR.

THE COURT: THAT WILL BE EXCLUDED. IT HAS RELEVANCE, NO DOUBT ABOUT IT. BUT IN WEIGHING IT'S RELEVANCE VERSUS THE OTHER FACTORS, SUCH AS THE TIME IT WILL TAKE TO BRING IT IN, THE TRIAL WITHIN A TRIAL THAT IT WILL MOST CERTAINLY WOULD REQUIRE, IT'S RELEVANCE IS OUTWEIGHED BY THOSE OTHER FACTORS UNDER 352, AND, THEREFORE, IT WILL BE EXCLUDED AND NOT REFERRED TO.

MR. GULLEY: THERE'S ONE LAST THING I HAVE, YOUR HONOR.

THE COURT: YES.

MR. GULLEY: MR. KNOX WAS RECENTLY ARRESTED AND CONVICTED OF A 243(E)(1), THIS WITH MS. KNOX BEING THE VICTIM. WOULD THE COURT ALLOW THAT AS IMPEACHMENT?

THE COURT: IS IT A CRIME OF MORAL TURPITUDE?

MR. LINK: NO, YOUR HONOR. ESSENTIALLY 243(E)(1) IS EXACTLY WHAT A BATTERY IS, EXCEPT IT HAS THE ELEMENT OF HAVING SOME SORT OF SPOUSAL OR SIGNIFICANT RELATIONSHIP.

THE COURT: THIS WAS A MISDEMEANOR 243(E)(1)?

MR. LINK: YES.

THE COURT: NO, THAT'S NOT AN IMPEACHABLE OFFENSE AND WILL NOT BE ALLOWED.

I WAS GOING TO ASK, I ASSUME THERE ARE NO DISCOVERY ISSUES REGARDING YOU'VE BEEN PROVIDED, MR. GULLEY, WITH ANY

SIMILAR PAST RECORDS THAT ANY OF THE PROSECUTION'S WITNESSES MAY HAVE AS FAR AS YOU KNOW?

MR. GULLEY: YEAH, THEY PROVIDED ME WITH EVERYBODY'S RECORD.

THE COURT: THERE ALWAYS SEEM TO BE DISCOVERY ISSUES THAT POP UP DURING THE MIDDLE OF THE TRIAL. IS ANYONE AWARE OF ANY POTENTIAL DISCOVERY ISSUES THAT HAVE NOT YET BEEN RESOLVED?

MR. LINK: AS FAR AS A HEADS UP, THERE IS ONE WITNESS THAT IS GOING TO BE CALLED BY DEFENSE, POSSIBLY SHERRY ROBBINS. SHE WAS INTERVIEWED BY DEFENSE. I WAS TOLD ABOUT HER YESTERDAY, AND I WAS GIVEN A REPORT YESTERDAY. SO, TECHNICALLY, I HAVEN'T HAD A CHANCE TO INTERVIEW HER.

THE COURT: YOU GOT WHAT YOU NEED IN TERMS OF A DATE OF BIRTH OR WHAT HAVE YOU?

MR. LINK: I DO, SO I'VE BEEN ABLE TO RUN HER RAPS.

THE COURT: OKAY.

MR. LINK: SO IF ANY ISSUES POP UP AND YOU HEARD ME COMPLAINING OR WHINING ABOUT THAT LATER --

THE COURT: WHINING? YOU AREN'T A WHINER, ARE YOU?

MR. LINK: NO, SIR.

THE COURT: MR. GULLEY, ANY POTENTIAL DISCOVERY ISSUES THAT YOU'RE AWARE OF?

MR. GULLEY: YOUR HONOR, ONLY THAT I KNEW MS. KNOX WAS -- THERE WAS AN INVESTIGATION GOING ON WITH HER, AND THERE WAS A QUESTION ABOUT WHETHER SHE WAS GOING TO BE ARRESTED OR NOT. OTHER THAN THAT, NO.

THE COURT: WELL, OKAY. YOU'RE NOT GOING TO BRING

ANYTHING LIKE THAT UP UNTIL AND UNLESS YOU GET MORE, RIGHT?

MR. GULLEY: RIGHT.

THE COURT: ALL RIGHT. I THINK WE'RE READY TO GO. DO WE HAVE THE JURORS HERE?

NOW, YOU'RE GOING TO NEED HELP WITH THE CLERK, RIGHT?

THE BAILIFF: YES, PLEASE.

THE COURT: MS. NEAL, IF YOU WOULD BE SO KIND AS TO BRING OUR JURORS IN AND TELL THEM TO FILL UP THE AUDIENCE.

YOU BOTH GET 15 MINUTES OF VOIR DIRE WHEN THE TIME COMES. THAT TIME WILL NOT COME UNTIL ABOUT 2 O'CLOCK.

MR. LINK: THANK YOU.

(JURY VOIR DIRE COMMENCES.)

(AT 12:06 P.M. THE NOON RECESS WAS TAKEN TO RESUME AT 1:30 P.M. OF THE SAME DAY.)

**EL CAJON, CALIFORNIA; TUESDAY, JANUARY 4, 2005; 1:40 P.M.**

(JURY VOIR DIRE RESUMES.)

(AT 4:40 P.M. THE JURY WAS SWORN BY THE CLERK TO TRY THE CAUSE.)

(AT 4:40 P.M. TWO ALTERNATE JURORS WERE SWORN BY THE CLERK.)

(AT 4:40 P.M. AN ADJOURNMENT WAS TAKEN TO RESUME ON WEDNESDAY, JANUARY 5, 2005, AT 9:15 A.M.)

# CERTIFICATE OF REPORTER

STATE OF CALIFORNIA )
) ss:
COUNTY OF SAN DIEGO )

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

JAMES CUNNINGHAM

CASE NO. SCE243538

JANUARY 4, 2005

PAGES 1 -- 16

I, IRENE PERKINS, CSR NO. 12727, A CERTIFIED SHORTHAND REPORTER IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I MADE A SHORTHAND RECORD OF THE PROCEEDINGS HAD IN THE WITHIN CASE AND THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT TRANSCRIPTION OF THE PROCEEDINGS IN THIS CASE.

DATED THIS 1ST DAY OF JUNE, 2005.

Irene Perkins

IRENE PERKINS, CSR 12727
OFFICIAL COURT REPORTER

– EVIDENCE MEMORANDUM – –

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Grouds A, B, C, D.
RAISED:
ANSWERS TO QUESTIONS
ON PAGES
(Pg. 2 11c. 12c.)(Pg. 3 15c.)) Pg. 4 17c. 19c.

EXHIBIT "F"

Grounds from Pages (6-7-8-9)

**_WHETHER_: THE DENIED REVIEW OF THE U.S. SUPREME COURT THE UNPUBLISHED DECISION BY THE COURT OF APPEAL HAS NECESSITY FOR REVIEW FOR THE FOURTH APPELLATE DISTRICT, DIVISION ONE, IN CASE NUMBER D-046320, AFFIRMING THE JUDGMENT OF THE SUPERIOR COURT OF SAN DIEGO COUNTY WITHOUT MODIFICATION.**

Grounds (A) ***Whether***: Witness recanting affected Appellants State and Federal Constitutional rights to present a defense and, to cross-examine witnesses against him. The prosecution witnesses are questionable for one Castro mental ability to perceive and recall was a reduction in testimony for the prosecution the testimony should not should been acceptable in the court of law Court of Appeals concluded a reasonable jury would not have received a significantly different impression of the witnesses if they had heard the evidence. Petitioner disagrees. Petitioner was entitled to a jury determination of the witness's not appellate court determination. Second, the impeachment petitioner sought to introduce was part Mrs. Knox who made accusation of domestic violence against her husband Chris Knox then with drew the accusation she showed a pattern of lying about violence. The trial court erred. By excluding, the evidence thereby violated Appellants Federal and State Constitutional rights. To present a defense that includes evidence to his defense and to confront with full cross-examination the witnesses against him included is (Chambers v. Mississippi (1973)410 U.S. 284.302 (35 L. Ed. 297, 93 S.C. 1038); In re Martin (1987)44 Cal. 3d 1, 29; People v. Reynolds (1984) 152 Cal. App. 3d 42 45.) Because the trial court's exclusion of the above evidence denied Appellant his right of confrontation, If the courts consider petitioner rights to be exercised the judgment should, be reversed unless the error was harmless beyond a doubt. The constitutional guarantee of a meaningful opportunity to present a complete defense grounded in the due process clause of the Fourteenth Amendment. and the compulsory process or confrontation clause of the Sixth Amendment ( Crane v. Kentucky ( 1986 ) 476 U.S. 683,690 (90 l. E D.636,106 S.2142); In re Martin, supra, 44 Cal .3 d at p.29.) this right includes the right to impeach witness at trial.( Chambers v. Mississippi, supra, 410 U.S. at pp .295-298,302: Olden. Kentucky (1988) U.S. 227,231 (102 L. ed. 2d 513, 109S Ct. .480.): United States v.Abel ( 1984) 469 U.S. 45, 50 (83 L. E d. 2d 450, 105 S. Ct. 465 , The Sixth Amendment right of confrontation imposes limitation on the trial court's ability to restrict the scope of cross-examination of prosecution witnesses. The law is well establish that defendant has a right under the Sixth Amendment confrontation clause to admit evidence showing a motive to make false accusations ( Delaware v. Van Arsdall ( 1986) 475 U.S. 673, 680-681 ( 106 S. Ct. 1435-1436, L. Ed. 2d 674) ( restriction on a defendant's right to cross-examine for bias in violation of the Sixth Amendment confrontation clause. ) As number of factors weight in the determination of whether this type of error is harmless. The factors included the importantance of witnesses testimony, In the Prosecution's case's, whether the testimony was cumulative, The presence or absence evidence corroborating or contradicting the testimony of the witnesses on material points, the extent of cross-examination otherwise permitted, and,of course, the over all strengths of the prosecution's case. Petitioner cries out submits that each of the Defense factors are not miscellaneous, but do demonstrates that prejudicial error excess occurred on behalf of the Prosecution and court. Additionally, reviews of these issues are necessary because petitioner is deprived of his constitutional rights and petitioner must exhaust his potential state remedies before seeking federal habeas relief. ( O'Sullivan V. Boerckel 1999 526 U.S. 838 119 S. CT. 1728, 144 L .Ed. 2d 1.)

Grounds (B) ***Whether***: The compulsory process or confrontation clause of the Sixth Amendment ( Crane v. Kentucky 1986) 476 U.S. 683, 690 ( 90 L. E D. 2d 636, 106 S. Ct. 2142); In re Martin, supra, 44 Cal. 3d at p.29.) Note; This right includes the right to impeach witnesses at trial (Chambers v. Mississippi, supra, 410 U.S. at p.295-298, 302; Olden v. Kentucky (1988) U.S. 227, 231 (102 L. ED. 2d 513, 109 S. Ct. 480); United States v. Abel ( 1984 ) 469 U.S. 45, 50 (83 L. ed . 2d 450, 105 S. Ct. 465. ) The Court has violated Appellants due process and trial rights. The court found relevant evidence for impeachment, but excluded the evidence base on the time it would take to bring it in court.
Based on the foregoing and on argument and the authorities in the opening briefs, prejudicial error occurred a witness's previous behavior that involved lying about criminal conduct also revealed a lack of respect for the criminal justice system, and is relevant for impeachment. The law is well establishing that a defendant has a right to fully, function under the association of the Sixth Amendment confrontation clause and to admit evidence showing a motive to make false accusations. (Delaware v. Van Arsdall (1986) 475 U.S. 673, 680 – 681 (106 S. Ct. 1431, 1435-1436, 89 l. ED 674). Note: restriction on a defendant's right to cross-examine a witness for bias is in violation of the Sixth Amendment Confrontation clause. In The Confrontation Clause guarantees, the defendant in a criminal prosecution case has the right of cross-examination, which in Includes exploration of bias and motive to accuse falsely. (Davis v.Alaska (1974) 415 U.S. 308,315-316(94 S. Ct. 1105, 39 L.2 d 347) A defendant's right to present his theory is a fundamental right, and all of his pertinent evidence should be considered by tries of fact.
( I d., at p. 317.) Evidence Code section 352 must bow to the due process right of a defendant to present all relevant evidence of significant probative value to his defense.' ( People v. Reeder (1978)82 Cal. App 3d 543 553.) While the admission of evidence pursuant to section 352 is within the discretion of the trial court, the exercise of such discretion should favor the defendant in case of doubt People v. Burrell-Hart (1987) 192 Cal. App 3d 593, 600.) The general rule is that this type of error requires reversal finding error based on A or B these convictions should be reversed. The so call corroboration of the witnesses is suspected sufficiently that it could not be concluded the impeachment would have made no difference to the jury. Yes, credibility was critical to the prosecution the case was a classic credibility contest between Rebecca Knox the so call mental patience on one hand, on the other the restricted petitioner. Recanting Witness and the mental disorder person that cannot recall also hallucinates. Appeals court says the fact victims of domestic violence often recant accusations did not provide a ground for denying petitioner the opportunity to impeach Knox.

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This unpleasant occasions of lying making the criminal accusation in the first place then later denying them shed light not only on Knox's credibility, and Castro but also the small importance she an him place on providing Statements to the law enforcement and prosecution and the authorities. Federal standards make clear that no trial within a trail'' was necessary petitioner was not required to call other witnesses, but could impeach Knox by questioning him and her. Impeachment requires only access to good faith basis to ask the impeachment question, but does not require the cross-examiner either to call or to be prepared to call witnesses United States. Davenport (9 th Cir. 1985) 753 F.2 d 1460.1463; United States v. Ruiz-Castro (10th cir. 1996) 92 F.3 d 1519, 1529; United States v. Lamar ( 4th Cir. 1995)75 F. 3 d 964, 971; (S. Oostendorp v .Trilok Khanna, Janesville Medical Center (7th Cir. 1991) 937 F.2 d 1177, citing United v. Elizonodo (7th Cir 1990)920 f.2 d.

Grounds (C) ***Whether***: The court may join California sister jurisdictions in concluding that a felon may raise the defense that possession of a weapon, otherwise prohibited, was for self-defense. (see. g., Taylor v. State (1993 636s0. 1246 Alabama; Marrero v. State ( 1987 ) 516 So. 2 d1052 ( Florida ); Duvall. Common wealth (1979 593 sw 2 d 884 v ( Kentucky State. Hardy (1978) 60 Ohio App .2d 325 (Ohio).Prosecution burden of proof violates petitioner's due process rights and trial rights. In all facets of the law. The Appellants was entitled to jury determination of whether, his access to a firearm was for self-defense. This is the type of issue where reviewing courts should no try to weight the evidence relating to the omitted defense. Defiant admitted he maintain cache of firearms for his protection because the Knox's and their associate geared constant threats toured appellant .Defiant had to be constantly definitive he felt his life was in grave danger Appellant had a constitutional right to have the jury determine every) 35 Cal. 3d 510 material issue presented by the evidence.'' (People v. Geiger W 1984, 519)

Grounds: (D) ***Whether***: There was no evidence that appellant fled in a manner showing consciousness of guilt within the meaning of Penal Code Section 1127c Thus, the flight was proper. If the instructions were appropriate, the pattern instruction base on section 1127c required modification in appellant's case. The flight instruction should be given with caution, As the court of appeal for the fifth Circuit noted: Analytically, flight is an admission by conduct O'Leary McCormick on evidence-271,p.655 rev. e d. 1972 ) Its probative value as circumstantial evidence of guilt depends upon the degree of confidence with four inferences can be drawn:(1)from the defendant's behavior to flight;( 2 )from flight to consciousness of guilt☹3)from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4)from consciousness of guilt concerning the crime charged to actual guilt of the crime charged. See general Miller v. United States, 116 U.S. 45,320 F.2 d 767,770 (1963) ; 1J. Wigmore, evidence 173, p.632 ( 3d ed. 1940). Petitioner feels the use of evidence of flight been criticized because the second and fourth inferences are not supported by common experience. And it is widely acknowledged that evidence of flight or conduct is" only marginally probative as to the ultimate issue of guilt or innocence. (United States v .Myers ( 5th Cir. 1977 ) 550 F .2 d 1036 1049, citing (United States v. Robin ( 1973 ) 475 F. 2 d 376, 384; (Wong Sun v United States) 1963 371 U.S. 471,484, fn. 10, ( 83 S. Ct. 407, 415 416, 9 L. Ed. 2 d 441, 452-453 ( United States v. Craig ) 7th Cir. 1975 ) 522 f. 2 d 29, 30. The courts of appeals for the ninth circuit recently explain that a flight instruction is proper unless the

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evidence support defendant's behavior to flight from consciousness of guilt concerning the crime charge; to actual guilt of the crime charged. United States v. Rene Blanco ( 9th Cir 2004 ) 392 f.3 d 382, 395, citing United States v. Silverman ( 9th Cir. 1988 861 f. 2 d 571, 581.) In Rene Blanco, the Court also considered the defendant's *lack of flight or evasion* when confronted by law enforcement agents. (Rene blanco, supra, 392 f .3 d at p. 3 9 6 .) Here, appellant also immediately submitted to law enforcement authority and cooperated fully when he was stopped. ( R. T .pp. 159,164.) Evidence supported an inference that appellant left for several reasons, including that his life was, being, threatened. Where, as here, there was no evidence of actual *flight*, giving of the C A L J IC No .2.52 was error There simple was no substantial evidence to support each of the four inferences prerequisite to giving the flight instruction. (United States v. Rene Blanco, supra 392 f. 3 d at p. 395. ) Even if *some* flight was appropriate, the pattern instruction required modification in this case (see e.g., People v. London (1988) 206 Cal. App. 3 d 896,904.) Here, because substantial evidence show an innocent reason for appellant's departure, the court should have modified the pattern instruction The jury it had to make preliminary factual findings before it could infer any consciousness of guilt from appellants departure. The jury ( People v. Gutierrez (1993) 14 Cal. App .4th 380, 388. ) must determine fact-finding. If the jury permitted to find a consciousness of guilt without making the requisite Preliminary factual findings, the prosecution's burden lessened and there is a danger of jury reliance upon an irrational or unjustified inference in violation of the defendant's Sixth and Fourteenth Amendment Rights. Appellant is leaving the scene where his life threatened by a yelling man arm with a baseball bat, and a yelling woman who threatened to shoot appellant in the face, did not support an inference of guilt. More over, the instruction directed the jury's attention to flight. Even though the instruction was permissive, the instruction suggested that flight was one type of guilt that could establish guilt. Base on the foregoing, appellant's conviction on all counts should be reversed 6 Chapman v. California (1967)386 U.S. 18, 24 (87 S. Ct. 824, 17 Ed. 2d 705).The instruction and also instructed that Any facet of the law with miscommunication by the prosecution had court confused. What constituted a question of fact for the Jury? A much needed, Rebecca Knox's record threats to shoot Appellant in his face were the reason Appellant left the apartment complex, in an instants. There was no permissive inference legally proper from the fact of his departure Appellant fled for reasons unrelated to consciousness of guilt. The instructional properly instructed jury would reasonably concluded that Christopher Knox's threaded to Appellant's lessened the Prosecution's burden of proof by allowing the Prosecution to benefit an inference which the people were not necessarily entitled too. In any trial or proceeding where evidence of a defendant relied upon as tending to show guilt, the court shall instruct the jury
Substantially as follows: The flight of a person immediately after the commission of a crime, or after he is accused of a crime that has been committed is not sufficient in itself to establish his guilt, but is a fact which if proved the jury may consider deciding his guilt or innocence. The weight to which such circumstance is a matter for the jury too determines.

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GROUNDS RAISED

ANSWERS TO QUESTION
ON PAGES
P-2 (11 c 12c) P-3-(15c) P-4-(17c)-(19c)

The trial court error by denying Petitioner's request to cross-examine Rebecca Knox regarding her prior accusations of domestic violence against her husband, Christopher Knox .Which she later recanted, and thereby violated petitioner's State and Federal rights to present a defense and cross examine witness against him.

The legal standards to impeachment evidence grantee of a meaningful presents to proper complete defense must be, granted in the due process clause of the Fourteen Amendment.

The court erred by denying the defense request to instruct with CAL JIC number 12.50 when the evidence warranted such instruction and the failure to do so impermissibly reduce the prosecutions burden of proof and violated petitioner's due process and trial rights.

The trial court erred in giving CAL JIC number 2.52 the statutory flight instruction over Defense objection thereby violating petitioner's due process rights.

EVIDENCE MEMORANDUM

# EXHIBIT

# "G"

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

DEPT. #12

Dept. 12 25-Pages D046320

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

BEFORE: HON. ALLAN J. PRECKEL DEPT. 12

| | |
|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. JAMES HENRY CUNNINGHAM, DEFENDANT. | CASE NO. SCE 243538 |

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 28TH, 2004
EL CAJON, CALIFORNIA

FILED
Clerk of the Superior Court
OCT 0 8 2004
By: J. BABARAN, Deputy

APPEARANCES:

FOR THE PEOPLE: BONNIE DUMANIS
DISTRICT ATTORNEY
BY: DAN LINK
DEPUTY D.A.

FOR THE DEFENDANT: PUBLIC DEFR'S OFC.
BY: STACY GULLEY

BOB CARLUCCI, C.S.R.
OFFICIAL REPORTER
SUPERIOR COURT
EL CAJON, CALIFORNIA

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| WITNESS: | D | X | RD | RX |
|---|---|---|---|---|
| STEPHEN THOMAS PAZ | 2 | 6 | 10 | 11 |
| BRIAN SCOTT CHASE | 12 | 17 | | |

## LIST OF EXHIBITS

| FOR THE PEOPLE: | | MARKED | IN EVID. |
|---|---|---|---|
| 1 | CERTIFIED COPY OF PRIOR CONVICTION | 21 | 21 |

D

SEPTEMBER 28TH, 2004, 11:30 A.M., EL CAJON, CA., DEPT. 12

THE COURT: WE'RE ON THE RECORD AT THIS TIME IN THE CASE OF THE PEOPLE VERSUS JAMES CUNNINGHAM FOR PRELIMINARY EXAMINATION, CASE NUMBER CE 243538.

COUNSEL, YOUR APPEARANCES, PLEASE.

MR. LINK: DAN LINK, DEPUTY DISTRICT ATTORNEY FOR THE PEOPLE. I HAVE OFFICER CHASE SITTING NEXT TO ME FROM THE EL CAJON POLICE DEPARTMENT. I WOULD LIKE TO DESIGNATE HIM AS MY INVESTIGATING OFFICER.

THE COURT: ALL RIGHT. THANK YOU. AGREED.

MR. GULLEY: STACY GULLEY, OFFICE OF THE PUBLIC DEFENDER ON BEHALF OF MR. CUNNINGHAM, PRESENT BEFORE THE COURT, IN CUSTODY.

THE COURT: THANK YOU. ANY PRELIMINARY MATTERS OR MOTIONS BEFORE WE PROCEED?

MR. GULLEY: THERE WILL BE A MOTION TO EXCLUDE.

MR. LINK: I HAVE TWO WITNESSES. ONE'S MY INVESTIGATOR. I'LL PUT MY OTHER ONE UP FIRST.

THE COURT: ALL RIGHT. THAT MAKES THE MOTION RATHER SUPERFLUOUS, SO WE'LL PROCEED IN THAT MANNER.

MR. LINK, YOU CAN CALL YOUR FIRST WITNESS.

MR. LINK: THANK YOU. THE PEOPLE CALL OFFICER PAZ TO THE STAND, P-A-Z.

(THE WITNESS WAS DULY SWORN)

THE CLERK: THANK YOU. PLEASE BE SEATED IN THE WITNESS BOX. WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD.

THE WITNESS: STEPHEN THOMAS PAZ, P-A-Z.

THE COURT: SPELL YOUR FIRST NAME ALSO, PLEASE.

THE WITNESS: FIRST NAME IS SPELLED S-T-E-P-H-E-N.

THE CLERK: THANK. YOU.

STEPHEN THOMAS PAZ

CALLED AS A WITNESS ON BEHALF OF THE PROSECUTION, AFTER HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LINK:

Q. SIR, WHAT'S YOUR OCCUPATION?

A. POLICE OFFICER WITH THE EL CAJON POLICE DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN WORKING AS A POLICE OFFICER?

A. APPROXIMATELY TWO AND A HALF YEARS.

Q. ON SEPTEMBER 12TH, 2004, WERE YOU WORKING AS A POLICE OFFICER?

A. YES, SIR, I WAS.

Q. AND AROUND 4:30 IN THE P.M. DID YOU RECEIVE A CALL?

A. 4:30 IN THE P.M., NEGATIVE.

Q. DID YOU RECEIVE A CALL AT SOME POINT OF A POSSIBLE ASSAULT?

A. YES, SIR. THAT WAS APPROXIMATELY 22:58 HOURS, WHICH IS 10:58.

Q. OKAY. AND WHERE WERE YOU AT THAT TIME WHEN YOU RECEIVED THAT CALL?

A. WHEN I RECEIVED THAT CALL, I WAS ACTUALLY ON BROADWAY IN ABOUT THE 900 BLOCK WHEN THE INITIAL CALL CAME OUT.

Q. THAT'S IN THE COUNTY OF SAN DIEGO?

A. CORRECT, IN THE COUNTY OF SAN DIEGO, IN THE CITY OF EL CAJON.

Q. HOW DID YOU RESPOND TO THAT CALL?

A. I RESPONDED TO THAT CALL BY HEADING TO THE DIRECTION TO WHERE THE CALL WAS ORIGNATING FROM, WHICH IS 545 NORTH MOLLISON.

Q. WHEN YOU STARTED HEADING TO THAT DIRECTION, WHAT HAPPENED?

A. I HEADED IN THAT DIRECTION. I WAS STOPPED AT A RED LIGHT DIRECTLY UNDER THE I-8 OVERPASS, WHICH IS THE 700 -- 6-, 700 BLOCK OF NORTH MOLLISON. I WAS STOPPED AT A RED LIGHT THERE.

Q. DID YOU HAVE A DESCRIPTION OF THE VEHICLE YOU WERE LOOKING FOR?

A. YES, SIR. DISPATCH ADVISED THAT THE VEHICLE WAS GOING TO BE A BLACK COLORED TUNDRA DRIVEN BY A BLACK MALE WEARING A HAWAIIAN SHIRT, AND I BELIEVE A HAT OF SOME SORT.

Q. OKAY. SO WHAT HAPPENED NEXT?

A. THEY -- DISPATCH ADVISED THAT THE VEHICLE HAD LEFT IN AN UNKNOWN DIRECTION AT A HIGH RATE OF SPEED. AS I WAS WAITING FOR MY LIGHT TO TURN GREEN -- AS I WAS WAITING FOR MY LIGHT TO TURN GREEN, I OBSERVED A VEHICLE LEAVING

FROM THAT APARTMENT COMPLEX 545 NORTH MOLLISON TRAVELING NORTH ON MOLLISON. IT PASSED BY ME. IT WAS NOT A TUNDRA, BUT IT WAS NISSAN, BLACK IN COLOR. DRIVER WAS A BLACK MALE, AND YOU COULD CLEARLY SEE IT WAS A HAWAIIAN PRINT SHIRT. HE DROVE BY.

Q. OKAY. WHAT DID YOU DO?

A. ALONGSIDE OF ME -- I WAS IN THE NO. 2 LINE. SERGEANT ZMIJEWSKI WAS IN THE NO. 1 LANE. BOTH OF US RECOGNIZED THAT VEHICLE AND IMMEDIATELY FOLLOWED GETTING ON TO THE FREEWAY.

Q. DID HE RUN ANY LIGHTS AT THAT TIME?

A. YES, HE DID. THERE WAS A RED CIRCULAR ARROW TO GET ONTO THE WESTBOUND I-8, WHICH HE RAN. AND WE FOLLOWED WITH LIGHTS AND SIRENS ACTIVATED.

Q. HOW LONG DID YOU FOLLOW THIS CAR? UNTIL IT PULLED OVER?

A. FROM THAT STOPLIGHT, WHICH WAS RUN, WHICH WOULD BE APPROXIMATELY A QUARTER MILE.

Q. DID THE CAR EVENTUALLY PULL OVER?

A. YES, IT DID.

Q. DID YOU HAVE TO PUT ON YOUR LIGHTS AND SIRENS?

A. YES.

Q. WERE YOU INVOLVED IN STOPPING THE CAR?

A. YES, I WAS.

Q. DO YOU SEE THE PERSON WHO WAS DRIVING THAT CAR IN COURT TODAY?

A. YES, I DO. THE DEFENDANT SEATED IN THE BLUE JUMPSUIT.

MR. LINK: IDENTIFYING THE DEFENDANT?

THE COURT: AGREED.

MR. LINK: THANK YOU.

BY MR. LINK:

Q. DID YOU ARREST THE DEFENDANT?

A. YES, SIR, I DID.

Q. OKAY. WHEN YOU WERE -- WHEN THE DEFENDANT WAS DRIVING AWAY FROM YOU, DID YOU SEE ANYTHING THROWN OUT THE WINDOW?

A. YES, SIR. I WAS THE NO. 2 CAR. MY SERGEANT WAS IN FRONT OF ME. AS WE PROCEEDED ONTO THE FREEWAY ON THE ON-RAMP, YOU COULD CLEARLY SEE SOMETHING THROWN OUT THE PASSENGER SIDE WINDOW. GRANTED IT WAS A PICKUP TRUCK. SO THERE WAS ONLY ONE SIDE WINDOW. YOU COULDN'T TELL WHAT IT WAS FROM THE DISTANCE I WAS. YOU COULD TELL IT HIT THE GROUND. YOU COULD SEE SPARKS COMING FROM IT. WHEN IT IMPACTED, YOU COULD SEE FROM THE IMPACT THERE WAS SPARKS CREATED.

Q. DID YOU EVER LOCATED THAT ITEM THAT WAS THROWN OUT?

A. YES, SIR, I DID. AFTER I ARRESTED THE SUBJECT, I THEN WALKED BACK ON FOOT AND LOCATED THE ITEM THEN.

Q. HOW FAR AWAY WAS THE ITEM FROM WHERE THE DEFENDANT WAS EVENTUALLY STOPPED, ROUGHLY?

A. ROUGHLY 500 TO 1,000 FEET.

Q. WHAT WAS THE ITEM?

A. THE ITEM WAS A SHOTGUN.

Q. ARE YOU FAMILIAR WITH WEAPONS?

A. SOMEWHAT, YES, SIR.

Q. COULD YOU PLEASE DESCRIBE THIS PARTICULAR WEAPON?

A. IT WAS A SAVAGE SHOTGUN. IT HAD A PISTOL GRIP STYLE HANDLE WHICH WAS FRAGMENTED. IT WAS WOOD. I RECOVERED ALL THE PIECES THAT I COULD FIND, ENOUGH TO ASSEMBLE IT TO ITS ORIGINAL DESIGN. THERE WAS ONE ROUND CHAMBERED IN THE CHAMBER. THERE WAS AN ADDITIONAL ROUND WHICH WAS IN CLOSE PROXIMITY TO WHERE IT LANDED. AND LATER ON, PRIOR TO MY PUTTING THE WEAPON INTO EVIDENCE, I DISCOVERED THAT THERE WAS TWO ADDITIONAL ROUNDS THAT WERE ALSO IN THE WEAPON.

Q. AND WHEN THE ITEM FELL OUT, THE SHOTGUN FELL OUT, PIECES BROKE OFF?

A. CORRECT.

Q. YOU COLLECTED ALL THOSE PIECES, THE SHOTGUN ITSELF AND THE SHELLS AND IMPOUNDED THEM?

A. CORRECT.

Q. DID YOU GO BACK TO THE SCENE OF THE CRIME --

A. NO. I'M SORRY.

Q. -- AND INTERVIEW WITNESSES?

A. NO, I DID NOT.

MR. LINK: NOTHING FURTHER.

CROSS-EXAMINATION

BY MR. GULLEY:

Q. WHEN YOU FOUND THE SHOTGUN AND THE PIECES, DID YOU FIND ANY OTHER METAL PIECES?

A. NO. THE METAL PORTION OF THE SHOTGUN REMAINED INTACT. THE PIECES THAT SHATTERED WERE THE WOOD FROM THE PISTOL GRIP.

Q. DID YOU FIND ANY OTHER METAL IN THE AREA?

A. JUST ONE OF THE SHELLS THAT ALSO HAD FALLEN OUT.

Q. SO THERE WAS NO LIKE SCRAP METAL OR ANYTHING LIKE THAT IN THAT AREA?

A. NO, SIR.

Q. WERE YOU CAREFUL IN PICKING UP THE GUN IN THAT THERE WAS FINGERPRINTS, YOU DIDN'T DISTURB THEM?

A. WHEN I PICKED UP THE WEAPON, I USED LATEX GLOVES.

Q. DID YOU SUBMIT THE GUN FOR PRINTS?

A. EXCUSE ME?

Q. DID YOU SUBMIT IT FOR PRINTING?

A. THE WEAPON?

Q. YES.

A. NO, I DID NOT.

Q. NOW, YOU INDICATED WHEN YOU FIRST ARRIVED AT THE SCENE AT 22:58, THAT'S WHEN YOU FIRST GOT THE CALL; IS THAT CORRECT?

A. THAT IS WHEN THE CALL WAS DISPATCHED THERE, CORRECT.

Q. DID YOU ACTUALLY GO TO THE COMPLEX ITSELF?

A. I DID NOT.

Q. HOW FAR DID YOU GET TO THE COMPLEX?

A. THE COMPLEX WOULD BE ROUGHLY 2,000 FEET. THAT'S A VISUAL. YOU COULD SEE IT FROM WHERE I WAS WHEN I OBSERVED

THE VEHICLE PASS BY ME.

Q. AND YOU IMMEDIATELY DID A U-TURN?

A. CORRECT. I HAD TO WAIT FOR MY SERGEANT TO DO IT FIRST BECAUSE HE WAS IN THE NO. 1 LANE. I WAS IN THE NO. 2 LANE.

Q. YOU BOTH U-TURNED, BEGAN TO FOLLOW THE VEHICLE; CORRECT?

A. YES, SIR.

Q. HOW LONG DID YOU FOLLOW BEFORE TURNING ON LIGHTS?

A. I IMMEDIATELY TURNED ON LIGHTS AND SIRENS BEFORE I DID THE U-TURN TO NOTIFY OTHER VEHICLES IN THE AREA.

Q. JUST YOUR LIGHTS?

A. LIGHTS AND SIRENS.

Q. AND YOU INDICATED THE CAR WENT ABOUT A QUARTER OF A MILE AFTER THAT?

A. APPROXIMATELY.

Q. COULD YOU TELL HOW FAST THE VEHICLE WAS GOING?

A. NO, SIR.

Q. NOW, IT'S MY UNDERSTANDING THIS CAMERA IS MOUNTED ON THE CAR; IS THAT CORRECT?

A. THAT IS CORRECT, SIR.

Q. THEY'RE AUTOMATICALLY ACTIVATED WITHIN THE CAR AT WHAT POINT?

A. AUTOMATICALLY ACTIVATED WHEN YOU TURN THE LIGHT BAR ON. IT TAKES USUALLY ABOUT THREE SECONDS TO CUE UP FROM THE TIME YOU TURN THE OVERHEAD LIGHTS ON.

Q. WAS YOUR CAMERA OPERATING?

A. YES, SIR, IT WAS.

Q. DID IT HAVE AUDIOTAPE?

A. THE WHOLE INCIDENT WAS ON VIDEOTAPE.

Q. THE SERGEANT, TOO; CORRECT?

A. I DON'T KNOW IF HIS VIDEO CAMERA'S ON OR NOT.

Q. DID YOU SUBMIT THAT TO THE DISTRICT ATTORNEY?

A. NO, I DID NOT.

Q. DO YOU STILL HAVE IT?

A. IT SHOULD BE IN STORAGE.

Q. THE VIDEOTAPE, HAVE YOU REVIEWED THE VIDEOTAPE?

A. NO, SIR, I HAVE NOT.

Q. HAS ANYONE REVIEWED IT?

A. NO, SIR.

Q. WHEN YOU SAID YOU PULLED OVER TO THE SIDE, WAS -- CAN YOU DESCRIBE HOW YOU PULLED OVER?

A. WHO PULLED OVER TO THE SIDE?

Q. THE SUBJECT.

A. OKAY. WE GOT ONTO THE FREEWAY. AFTER THE ITEM WAS DUMPED OUT THE WINDOW, HE YIELDED APPROXIMATELY THREE SECONDS AFTER.

Q. HOW FAR WAS HE FROM WHERE YOU STARTED FOLLOWING HIM TO THE FREEWAY?

A. I'M NOT FOLLOWING YOUR QUESTION.

Q. IN TERMS OF DISTANCE -- YOU SAID YOU MADE A U-TURN?

A. CORRECT.

Q. YOU FOLLOWED HIM FOR A QUARTER OF A MILE?

A. CORRECT.

Q. AM I TO UNDERSTAND THEN HE WENT ABOUT A QUARTER OF A MILE BEFORE HE STOPPED?

A. LET ME JUST MAKE THIS CLEAR. HE WENT APPROXIMATELY ONE QUARTER OF A MILE FROM THE POINT THAT HE PASSED ME, WHICH IS UNDER I-8, UNTIL THE POINT HE YIELDED. THAT'S APPROXIMATELY A QUARTER MILE.

Q. OKAY. WITHIN THAT QUARTER OF A MILE, WHERE WAS THE FREEWAY THAT YOU SAID --

A. WE WERE DIRECTLY -- WHEN I SAW HIM, HE PASSED ME, I WAS DIRECTLY UNDER THE FREEWAY AT THE LIGHT WAITING TO GO. SO THE FREEWAY IS VIRTUALLY RIGHT THERE.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

THE COURT: MR. LINK.

REDIRECT EXAMINATION

BY MR. LINK:

Q. THAT SAWED OFF SHOTGUN, IS THAT ALSO KNOWN AS A SHORT-BARRELED SHOTGUN?

A. CORRECT, UNDER 26 INCHES OVERALL LENGTH.

Q. IT WAS SAWED OFF?

A. YES, SIR.

MR. LINK: NOTHING FURTHER.

THE COURT: WELL, LET'S CLARIFY THAT. DID YOU MAKE A DETERMINATION OF THE OVERALL LENGTH OF THE WEAPON?

A. I MEASURED THE WEAPON. IT MEASURED TO BE 25.5 INCHES FROM BARREL TO THE END.

BY MR. LINK:

Q. AND AFTER SEEING THOSE MEASUREMENTS, IS THAT

CONSIDERED TO BE A SHORT-BARREL SHOTGUN?

A. YES. THE LENGTH REQUIREMENT IS 26 INCHES AND I BELIEVE THE BARREL LENGTH, SPECIFICALLY JUST THE BARREL LENGTH ON THAT WEAPON WAS 13.5 INCHES.

MR. LINK: THANK YOU.

RECROSS-EXAMINATION

BY MR. GULLEY:

Q. YOU MEASURED IT FROM WHERE?

A. FROM BARREL TO THE END, WHICH WOULD BE THE GRIP ON THAT WEAPON WAS 25.5 INCHES.

Q. AND SO YOU PUT IT BACK TOGETHER?

A. YES, SIR.

Q. AND THEN MEASURED IT?

A. CORRECT.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

MR. LINK: NOTHING.

THE COURT: ALL RIGHT. THANK YOU, OFFICER. YOU MAY STEP DOWN.

MR. LINK: THE PEOPLE CALL OFFICER CHASE TO THE STAND.

(THE WITNESS WAS DULY SWORN)

THE CLERK: THANK YOU. PLEASE STATE YOUR FULL NAME FOR THE RECORD.

THE WITNESS: BRIAN SCOTT CHASE, C-H-A-S-E.

THE CLERK: HOW DO YOU SPELL BRIAN?

THE WITNESS: B-R-I-A-N.

THE CLERK: THANK YOU.

BRIAN SCOTT CHASE

CALLED AS A WITNESS ON BEHALF OF THE PROSECUTION, AFTER HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LINK:

Q. SIR, WHAT IS YOUR OCCUPATION?
A. I'M A POLICE OFFICER FOR THE CITY OF EL CAJON.
Q. HOW LONG HAVE YOU BEEN A POLICE OFFICER?
A. TEN YEARS.
Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT SEPTEMBER 12TH, 2004. WERE YOU WORKING AS A POLICE OFFICER THAT DAY?
A. YES, I WAS.
Q. DID YOU RESPOND ON THAT DAY TO A CALL OF A POTENTIAL ASSAULT?
A. YES, I DID.
Q. AND WHAT TIME WAS THAT?
A. IT WAS ABOUT 10:15-ISH, I BELIEVE.
Q. WERE YOU IN YOUR CAR?
A. YES, I WAS.
Q. AND WHERE DID YOU INITIALLY RESPOND TO?
A. I WAS IN RESPONSE TO 545 NORTH MOLLISON WHERE THE CALL ORIGINATED FROM. I WAS COMING FROM THE WEST SIDE OF THE CITY OF EL CAJON.
Q. WHAT HAPPENED?
A. WHILE IN ROUTE THERE, WE RECEIVED INFORMATION THAT THE SUSPECT HAD A GUN, HAD A POSSIBLE SHOTGUN AND WAS LEAVING IN A PICKUP TRUCK.

Q. WHAT DID YOU DO?

A. AS I TURNED ONTO NORTHBOUND MOLLISON FROM EAST MADISON, WHICH IS PROBABLY 50 YARDS FROM THIS COMPLEX, THE SERGEANT, SERGEANT ZMIJEWSKI AND OFFICER PAZ PICKED UP THE VEHICLE GOING ONTO WESTBOUND INTERSTATE 8 FROM NORTH MOLLISON.

Q. DID YOU HELP THEM OUT WITH THAT?

A. I PULLED IN BEHIND AS THEY WERE CONDUCTING THE VEHICLE STOP.

Q. OKAY. FOR THE COURT REPORTER, ZMIJEWSKI IS Z-M-I-J-E-W-S-K-I.

SO YOU DID HELP WITH THE STOP; CORRECT?

A. YES. AS THE SERGEANT WAS ENTERING ON THE FREEWAY AND AS I WAS RESPONDING UP THAT WAY, HE PUT OUT OVER THE POLICE RADIO THAT THE SUSPECT HAD THROWN A GUN OUT THE WINDOW.

Q. YOU DIDN'T ACTUALLY SEE ANY OF THAT?

A. NO, I DID NOT SEE THAT.

Q. DID YOU EVENTUALLY GO BACK TO 545 NORTH MOLLISON AND INTERVIEW SOME POTENTIAL VICTIMS?

A. YES, I DID.

Q. IS REBECCA KNOX ONE OF THOSE INDIVIDUALS?

A. YES, SHE IS.

Q. WHAT DID SHE HAVE TO SAY ABOUT WHAT HAPPENED THAT NIGHT AT 545 NORTH MOLLISON?

A. SHE WAS SITTING IN THE ROOM WITH HER ROOMMATE. I WOULD HAVE TO LOOK AT THE REPORT TO REFRESH MY RECOLLECTION ON HIS NAME. I BELIEVE IT WAS CASTILLO.

Q. OKAY.

A. NO, CASTRO. THEY WERE SITTING IN THE FRONT ROOM. THE DOOR TO THE APARTMENT WAS OPENED. AT THIS TIME MR. CUNNINGHAM ENTERED THE APARTMENT THROUGH THE OPEN DOOR AND HE HAD A SHOTGUN IN HIS HAND.

Q. WHAT DID SHE SAY HAPPENED NEXT?

A. HE WAS ANGRY ABOUT A CELL PHONE.

Q. WHO IS "HE"?

A. I'M SORRY. MR. CUNNINGHAM WAS ANGRY ABOUT A CELL PHONE THAT WAS MISSING AND HE BELIEVED THAT THEY HAD STOLEN IT FROM HIM. HE ENTERED THE APARTMENT AND HE WAS ACCUSING CASTRO OF TAKING THE CELL PHONE. AT ONE POINT HE TOOK THE SHOTGUN SHE SAID AND PUT IT TO CASTRO'S NECK AND PUSHED HIM WITH IT ABOUT FIVE FEET PINNING HIM AGAINST THE WALL OF THE APARTMENT.

Q. DID MISS KNOX SAY THE DEFENDANT WAS SAYING ANYTHING WHILE HE WAS DOING THIS?

A. I BELIEVE SHE SAID HE WAS THREATENING TO KILL HIM IF HE DIDN'T GET HIS CELL PHONE BACK.

Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO SPEAK TO A CHRISTOPHER KNOX?

A. YES.

Q. K-N-O-X.

WHO IS THAT?

A. THAT IS THE HUSBAND OF -- MY APOLOGIES. I'VE HAD LITTLE SLEEP.

Q. OF REBECCA?

A. OF REBECCA, YES.

Q. THEY LIVE IN THAT APARTMENT?
A. YES.
Q. WHAT NUMBER IS IT?
A. IT WAS NO. 4, I BELIEVE.
Q. WAS THAT ON THE SECOND LEVEL OR THE FIRST LEVEL?
A. THAT'S ON THE SECOND LEVEL. THE SECOND APARTMENT WEST OR EAST FROM THE STREET ON THE SOUTH BUILDING OF 545 NORTH MOLLISON.
Q. DO YOU KNOW WHERE THE DEFENDANT LIVES IN THAT COMPLEX?
A. HE CLAIMED HE LIVED IN NO. 1, WHICH IS THE FIRST FLOOR, THE FIRST ONE FROM THE STREET. SO IT'S BASICALLY -- YOU GO RIGHT BELOW THEM IS NO. 3 AND THEN JUST DIRECTLY WEST.
Q. OKAY. SO THE DEFENDANT, ACCORDING TO REBECCA KNOX AND CHRISTOPHER KNOX, LIVED BELOW THEM?
A. YES.
Q. OKAY. WHAT DID CHRISTOPHER KNOX SAY THE DEFENDANT DID ON THAT NIGHT?
A. KNOX SAID THAT HE HAD BEEN IN THE APARTMENT EARLIER AND HE WAS YELLING AT CASTRO ABOUT THE CELL PHONE THAT HE BELIEVED HE HAD TAKEN. AT ONE POINT MR. CUNNINGHAM LEFT AND HE RETURNED A WHILE LATER. AT THIS TIME CHRISTOPHER WAS IN HIS BEDROOM. HE HEARD SOME KIND OF COMMOTION. HIS WIFE REBECCA CALLED FOR HIM. HE CAME OUT INTO THE LIVING ROOM AND SAW MR. CUNNINGHAM WITH THE SHOTGUN.
Q. WHAT DID HE SAY HAPPENED NEXT?

A. HE SAID WHEN HE CAME OUT CUNNINGHAM HAD CASTRO BY THE NECK AND WAS POINTING THE SHOTGUN IN HIS FACE AND HE WAS THREATENING TO KILL EVERYONE IN THE APARTMENT.

Q. OKAY. LET ME STOP YOU THERE.

A. I'M SORRY.

Q. DID EITHER REBECCA KNOX OR CHRISTOPHER KNOX TELL YOU THAT THEY GAVE PERMISSION FOR THE DEFENDANT TO BE IN THAT HOUSE?

A. NO ONE GAVE HIM PERMISSION TO ENTER THE APARTMENT.

Q. DID YOU SPEAK WITH A JOSE CASTRO?

A. YES.

Q. AND WHAT DID HE HAVE TO SAY ABOUT WHAT THE DEFENDANT DID THAT EVENING?

A. HE STATED THAT IT ALL STARTED -- HE HAD RETURNED A VACUUM CLEANER THAT REBECCA HAD BORROWED A FEW WEEKS PRIOR. HE HAD TAKEN IT DOWNSTAIRS TO APARTMENT NO. 1 AND PUT IT ON THE PATIO OF NO. 1. IT KIND OF LIKE HAS A LITTLE RAISED AREA ENCLOSING IT.

Q. NO. 1 IS THE DEFENDANT'S?

A. YES, IT IS. MR. CUNNINGHAM LIVES THERE.

Q. WHAT DID HE SAY HAPPENED THERE?

A. HE WENT BACK UPSTAIRS. A FEW MINUTES LATER CUNNINGHAM ENTERED THROUGH THE APARTMENT THROUGH THE OPEN DOOR, JUST WALKED IN, STARTED ACCUSING CASTRO OF STEALING HIS CELL PHONE. WHEN HE SAID, "I DON'T KNOW ANYTHING ABOUT YOUR CELL PHONE," MR. CUNNINGHAM LEFT STATING THAT HE WAS GOING TO GO LOOK FOR HIS PHONE. IF HE DIDN'T FIND IT HE WAS

GOING TO COME BACK AND KILL EVERYONE.

Q. SO WHAT DID CASTRO SAY HAPPENED NEXT?

A. I BELIEVE HE SAID ABOUT A COUPLE HOURS LATER MR. CUNNINGHAM CAME BACK INTO THE APARTMENT THROUGH THE OPEN DOOR WITH THE SHOTGUN AND POINTED IT AT HIM, AND SAID HE WAS GOING TO KILL HIM IF HE DIDN'T GET HIS CELL PHONE BACK.

Q. WHAT DID HE SAY AFTER THAT?

A. HE STATED THAT THE ROOMMATE, CHRISTOPHER, CAME OUT OF THE BEDROOM AND TOLD CUNNINGHAM TO LEAVE, AND CUNNINGHAM POINTED THE SHOTGUN AT HIM AND HE FINALLY LEFT THE APARTMENT.

MR. LINK: THANK YOU. NOTHING FURTHER.

THE COURT: MR. GULLEY.

CROSS-EXAMINATION

BY MR. GULLEY:

Q. PRIOR TO THIS EVENING, HAD YOU HAD ANY OTHER CONTACTS WITH THIS DEFENDANT?

A. NEGATIVE.

Q. DID YOU EVER TELL THE DEFENDANT YOU KNOW HIM FROM SOMEWHERE ELSE?

A. I'M SORRY?

Q. DID YOU EVER TELL THE DEFENDANT THAT YOU KNEW HIM FROM SOMEWHERE ELSE?

A. NEGATIVE.

Q. THIS APARTMENT COMPLEX, ARE YOU FAMILIAR WITH IT?

A. YES.

Q. AND HOW ARE YOU FAMILIAR WITH IT?
A. IT'S AN APARTMENT COMPLEX IN MY SECTOR. WE GET A LOT OF CALLS THERE.
Q. HAVE YOU EVER GOTTEN PRIOR CALLS INVOLVING THE KNOX?
MR. LINK: OBJECTION. RELEVANCE.
THE COURT: SUSTAINED.
BY MR. GULLEY:
Q. DID YOU KNOW CHRISTINE OR REBECCA KNOX PRIOR TO THIS EVENING?
MR. LINK: OBJECTION. RELEVANCE.
THE COURT: OVERRULED.
A. I HAD BEEN IN THE APARTMENT ONCE BEFORE.
BY MR. GULLEY:
Q. AND WAS THE DEFENDANT IN ANY WAY INVOLVED IN THAT?
A. NOT THAT I'M AWARE OF.
Q. OTHER THAN THE KNOXES AND MR. CASTRO, YOU HAVE HAD AN OPPORTUNITY TO SPEAK TO OTHER WITNESSES; IS THAT CORRECT?
A. THAT IS CORRECT.
Q. YOU SPOKE TO MISS NINA, I BELIEVE, TALAVERA?
A. YES.
Q. WHAT DID SHE SAY ABOUT THE INCIDENT?
A. SHE SAID SHE WAS WOKEN UP BY THE YELLING AND SCREAMING. SHE LOOKED OUT HER WINDOW AND MR. CUNNINGHAM WAS DOWN IN THE PARKING LOT BY THE BOTTOM OF THE STAIRS AND CHRISTOPHER KNOX WAS UP ON THE STAIRCASE AND THAT THEY WERE

YELLING AT EACH OTHER.

Q. DID SHE REPEAT ANY WORDS FROM MR. KNOX?

A. SHE STATED THAT SHE BELIEVED SHE HEARD MR. KNOX SAY IF MR. CUNNINGHAM CAME BACK TO THE APARTMENT HE WOULD SHOOT HIM IN THE FACE.

Q. DID YOU HAVE AN OPPORTUNITY TO SPEAK TO THE OWNER OR MANAGER OF THE APARTMENT?

A. I'M SORRY?

Q. DID YOU HAVE AN OPPORTUNITY TO SPEAK TO THE MANAGER OF THE APARTMENT COMPLEX?

A. SHE WAS THERE, YES.

Q. OKAY. DID SHE TELL YOU THAT THE KNOXES AND MR. CASTRO WERE BEING EVICTED FROM THEIR --

A. NEGATIVE.

Q. DID YOU SUBSEQUENTLY LEARN THAT THEY HAD BEEN EVICTED?

MR. LINK: OBJECTION. RELEVANCE.

THE COURT: SUSTAINED.

BY MR. GULLEY:

Q. WHAT DID SHE SAY TELL YOU--THE OWNER--WHEN YOU SPOKE TO HER?

MR. LINK: OBJECTION. VAGUE AS TO TIME.

THE COURT: REPHRASE.

MR. GULLEY: THANK YOU, YOUR HONOR.

BY MR. GULLEY:

Q. YOU TOLD US THAT THE MANAGER OF THE APARTMENT WAS PRESENT THAT EVENING; CORRECT?

A. SHE WAS PRESENT WHEN I ARRIVED BACK ON THE

SCENE, YES.

Q. DID YOU SPEAK TO HER ABOUT THE INCIDENT?

A. SHE DIDN'T WITNESS ANY OF IT.

Q. MY QUESTION WAS DID YOU SPEAK TO HER ABOUT IT?

A. YES. SHE WAS THERE. I ASKED HER IF SHE HAD SEEN ANYTHING.

Q. DID SHE TALK TO YOU ABOUT THE PERSONS INVOLVED?

A. NO.

Q. WHO ELSE DID YOU SPEAK TO THAT NIGHT?

A. I SPOKE TO THE ON-SITE SECURITY GUARD.

Q. THAT'S MR. BLUMFIELD?

A. YES.

Q. ANYONE ELSE?

A. THERE WERE NO OTHER WITNESSES THAT WE LOCATED.

Q. DID YOU SEE ANY WOUNDS OR INJURIES ON MR. CASTRO'S NECK?

A. NO.

Q. DID MISS KNOX TELL YOU ANYTHING ABOUT CHECKS THAT WERE STOLEN FROM THE APARTMENT?

A. NO.

MR. GULLEY: MAY I HAVE A SECOND PLEASE, YOUR HONOR?

THE COURT: SURE.

MR. GULLEY: THANK YOU. NOTHING FURTHER.

MR. LINK: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, OFFICER. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

MR. LINK: YOUR HONOR, I HAVE NO FURTHER WITNESSES, BUT I DO HAVE WHAT'S BEEN PREVIOUSLY MARKED AS PEOPLE'S 1 FOR IDENTIFICATION, CERTIFIED COPY OF A PRIOR CONVICTION. CASE NO. CR 64287 CONSISTING OF SIX PAGES. PAGE 2 IS A CHANGE OF PLEA FORM INDICATING THAT A PERSON BY THE NAME OF JAMES HENRY CUNNINGHAM PLED GUILTY TO PENAL CODE SECTION 211, ROBBERY.

I MOVE TO RECEIVE PEOPLE'S 1 INTO EVIDENCE AT THIS TIME.

THE COURT: MR. GULLEY, ANY OBJECTION?

MR. GULLEY: NO, YOUR HONOR.

THE COURT: ALL RIGHT. PEOPLE'S 1 IS RECEIVED.

MR. LINK: THE PEOPLE REST.

(PEOPLE'S EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE)

THE COURT: MR. GULLEY, ANY AFFIRMATIVE DEFENSE EVIDENCE?

MR. GULLEY: NOT AT THIS TIME, YOUR HONOR.

THE COURT: ANY ARGUMENT?

MR. LINK: SUBMIT.

THE COURT: ALL RIGHT. THE COURT HAS REVIEWED PEOPLE'S EXHIBIT NO. 1 AS RECEIVED IN EVIDENCE. THE COURT FINDS THAT THERE IS SUFFICIENT EVIDENCE TO HOLD MR. CUNNINGHAM TO ANSWER FOR EACH AND ALL OF THE CHARGES SET OUT IN THE COMPLAINT. ALSO SUFFICIENT EVIDENCE TO SUPPORT EACH AND ALL OF THE ALLEGATIONS ASSOCIATED WITH COUNT 1 AND COUNT 2. ACCORDINGLY, HE'S HELD TO ANSWER AS CHARGED IN THE

COMPLAINT.

I'LL RETURN THE ORIGINAL OF THAT DOCUMENT TO YOU, MR. LINK. YOU CAN MAKE THE NECESSARY CHANGES TO CONVERT IT TO AN INFORMATION. WE'LL THEN PROCEED WITH THE ARRAIGNMENT THEREON AND THE SETTING OF FURTHER DATES.

MR. GULLEY.

MR. GULLEY: THANK YOU, YOUR HONOR. WE ARE IN RECEIPT OF THE INFORMATION. HIS TRUE NAME IS JAMES HENRY CUNNINGHAM AS IT APPEARS. HIS BIRTHDAY IS ALSO AS IT APPEARS ON THE INFORMATION. HE'S BEEN PREVIOUSLY ADVISED OF HIS CONSTITUTIONAL RIGHTS AND THE CHARGES AGAINST HIM, AT THIS TIME ENTERS NOT GUILTY PLEAS DENYING ANY AND ALL ALLEGATIONS. THIS DOES APPEAR TO BE AN APPROPRIATE CASE FOR THE PUBLIC DEFENDER'S OFFICE.

THE COURT: ALL RIGHT. AGREED. FOR THE RECORD, THE CHARGING DOCUMENT HAS NOW BEEN RETURNED TO THE COURT AS AN INFORMATION, DATED AND SIGNED AS SUCH BY MR. LINK. THE CASE NUMBER IS NOW SCE 24538.

MR. CUNNINGHAM, TO THE CHARGES OF THE INFORMATION, HOW DO YOU NOW PLEAD, GUILTY OR NOT GUILTY?

THE DEFENDANT: NOT GUILTY.

THE COURT: DO YOU ADMIT OR DENY THE ALLEGATIONS?

THE DEFENDANT: DENY.

THE COURT: NOT GUILTY PLEAS AND DENIALS ARE ACCEPTED AND ENTERED ON THE MINUTES OF THE COURT.

MR. GULLEY, DUE COURSE DATES ARE NOVEMBER 2ND FOR READINESS, NOVEMBER 15TH FOR TRIAL. ARE THOSE DATES

ACCEPTABLE?

MR. GULLEY: YES, YOUR HONOR.

THE COURT: VERY WELL. THEN THE CASE IS ORDERED SET FOR READINESS CONFERENCE ON TUESDAY, NOVEMBER 2ND, 9:30 IN THE MORNING, DEPARTMENT 11. IT'S ORDERED SET FOR TRIAL ON MONDAY, NOVEMBER 15TH, 9:00 A.M., ALSO DEPARTMENT 11. MOTION FILING DEADLINE OCTOBER 12TH. BAIL TO REMAIN AS SET.

MR. GULLEY, ANYTHING FURTHER AT THIS TIME?

MR. GULLEY: NO, YOUR HONOR.

THE COURT: MR. LINK?

MR. LINK: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. THAT CONCLUDES THIS HEARING. THANK YOU. WE'RE IN RECESS.

MR. LINK: THANK YOU.

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STATE OF CALIFORNIA )
) SS.
COUNTY OF SAN DIEGO )

I, BOB CARLUCCI, CERTIFIED SHORTHAND REPORTER, AN OFFICIAL REPORTER OF THE SUPERIOR COURT, EAST COUNTY DIVISION, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS HELD IN THE FOREGOING CAUSE ON THE 28TH DAY OF SEPTEMBER, 2004; THAT MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A CORRECT STATEMENT OF THE PROCEEDINGS.

DATED THIS 5TH DAY OF OCTOBER, 2004.

BOB CARLUCCI
CERTIFIED SHORTHAND REPORTER #5552